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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, ~~1947~~ 1948

No. ~~757~~ 46

NATIONAL LABOR RELATIONS BOARD, *Petitioner*

vs.

STOWE SPINNING COMPANY, ACME SPINNING COMPANY, PERFECTION SPINNING COMPANY AND LINFORD MILLS, INC.

BRIEF OF RESPONDENTS IN OPPOSITION TO THE PETITION OF NATIONAL LABOR RELATIONS BOARD FOR WRIT OF CERTIORARI TO CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

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QUESTION PRESENTED

The question in this case is—

Can the Respondents be required to continuously maintain a building for union purposes whenever it suits the convenience of the employees of any one of the Respondents, The Textile Workers Union, C. I. O., or any other labor organization to requisition it (even though the building be not on the mill premises of any one of the Respondents), and to that extent to require the owners against their will to surrender their property rights?

The Board said yes.

The Circuit Court said no.

The Circuit Court of Appeals held that the finding and order of the Board are (1) in conflict with Subsection 8 (2) of the

Act, which makes it unlawful for an employer to contribute financial support to a labor organization, and (2) in conflict with the Constitution of the United States, Amendment V, in that they would deprive the Respondents of property without due process of law.

STATEMENT OF FACTS

North Belmont is an unincorporated town the center of which is some 2½ miles from the center of the City of Belmont, North Carolina. (R.29) It is not a "company-town", in the sense that it is owned by one company. Each of the four Respondents owns a cotton mill in the town. These four companies are separate and distinct North Carolina Corporations. Some of the officers of Acme, Perfection and Linford are officers of one or both of the others. (R.30-31). There is no evidence that they have interlocking directorships. There is no evidence that anybody connected with Stowe Spinning Company has any interest in any of the other Companies except D. P. Stowe, who owns a "very small amount" of stock in all four of the companies. The companies maintain separate and distinct villages for the residence of their employees, though some employees live outside the villages. The villages are not all contiguous to each other. The villages of Stowe Spinning Company and Acme Spinning Company practically join one another. The villages of Linford Mill and Perfection Mill join. The Acme Mill is about a half mile from Linford and Perfection Mills. The Patriotic Order Sons of America hall (in the same building as the post office) is more or less centrally located with respect to the Acme and Stowe villages. The hall is a quarter of a mile from the Stowe Mill and not more than 500 yards from the Stowe Village. (R. 31 and 32).

There is no evidence that there are not other businesses, buildings and property in the town of North Belmont besides such as are owned by the several mills.

OWNERSHIP, CHARACTER AND PURPOSE OF THE HALL

The undisputed evidence, testimony of D. P. Stowe (R. 32-39), Baxter Black (R. 40-47 and 119-123), and O. R. Stewart (R. 47-48 and 120-123), is to the effect that the Patriotic Order Sons of America is a national patriotic secret order, open to membership to any male of good character, its slogan being "God, our Country, our Order"; that a lodge or camp of the order was organized in North Belmont in 1929; that most of the members are employees of the North Belmont Mills, for the reason that most of the people in the village are employees of those mills, but that others who are not mill employees belong to it; that for several years, up until 1937, they held their meetings in the North Belmont School building; that the membership got too big for the school building and they wanted a building of their own; that in 1937 they appointed a committee to work with the idea of having a building of their own; that the four Respondents owned in common a vacant lot on the main street of the village, consisting of Lots 1, 2, 3 and 4 of the Skidmore lands, purchased by them from Thomas W. Springs and wife (R. 109); that the committee approached the owners with a view to acquiring the lot and erecting a building thereon with the aid of government funds; that the owners advised them that they were considering erecting a building on the lot for store rooms and post office, and proposed to put a hall on the second floor and let the Order use it for the purposes of the Order; that this was agreed to and the building was erected; that the lower floor was rented for a store and the village post office; that the P. O. S. of A. was given the use of the hall rent-free, with the understanding that it was not to be used for any other purpose. In the examination before the Trial Examiner the Board's attorney asked the Board's witness Stewart (who had been a member of the committee) if there was any reason why Mr. Harris, the union organizer, could

not have the use of the building, to which the answer was: "Absolutely, because the companies told us we could not let anybody have the building, any other organization." When the owners built the building they told the P. O. S. of A. that they were going to let them have the building free of rent but were not going to allow it to be rented for any (other) purpose, and that had been the policy since 1937. (R. 36, 39).

THE HALL WAS NOT A PUBLIC OR COMMUNITY HALL

The P. O. S. of A. camp has occupied the hall since 1937. It has its own equipment in the hall, 200-odd chairs, kitchen arrangement with dishes and all kinds of cooking equipment. Occasionally church suppers and like affairs have been held there. In the spring of 1945 a safety school was held there. O. R. Stewart testified that the use of the hall for church suppers was permitted because that came under the social activities of the Order. (R. 122).

Harris, the union organizer, first saw Stewart, who was the financial secretary of the camp, about getting the use of the hall for the January 28, 1945, meeting. Stewart referred him to Black, the president. (R. 79). Black testified that he told Harris the organization would have to have a meeting first before he could get the hall. (R. 45 and R. 128). However, the Board found that Black gave Harris permission to use the hall, without any qualification. No meeting of the organization was held. After talking with Stewart, Black reported the matter to Mr. Cauble, the superintendent of the Acme mill. Cauble or Stewart reported it to D. P. Stowe, the man who controlled the building for the owners. Stowe refused to permit the union meeting to be held in the hall (R. 50). The evidence that the P. O. S. of A. was allowed the use of the hall rent-free on condition that they should not let it be used by any other organization is not contradicted.

ARGUMENT IN OPPOSITION TO THE PETITION IN NO. 757

The hall was not built for a public hall or a community house, and the fact that it was used occasionally for church suppers and other purposes did not convert it into such. It was private property and the owners had a perfect right to refuse to allow it to be used for other purposes, or for any purpose. The fact that they did not register an objection when the Order permitted it to be used occasionally for other purposes did not estop them thereafter to refuse its use for any purpose, with or without cause. It did not convert the hall into a public hall or community hall open to the use of all comers. The union had no more right to use it than anybody else.

Whether Black did or did not tell Harris he could have the hall for the meeting is immaterial. The evidence is uncontradicted that the hall belonged to the respondents and that it was furnished rent-free to the P. O. S. of A. lodge upon the condition that it was not to be used by any other organization. If Black attempted to violate the terms of the agreement he "overstepped his bounds", and the owners had a right to demand compliance with the condition. The fact that the hall had occasionally been used for church suppers and other events in the course of eight years did not change the terms on which the lodge was granted the use of the hall or deprive the owners of the right to demand that the terms of the agreement be complied with. Black's actions are not determinative of the issue. D. P. Stowe's are. He represented the owners. As their agent he refused to let Harris, a union organizer, have the hall to hold a union meeting in, which was a compliance with rather than a violation of the provision of the Act, which forbids an employer to furnish support to a union. The owners (acting through D. P. Stowe) were within their constitutional rights in refusing the use of the hall. They were also following the decisions of the courts.

The refusal of the owners of the P. O. S. of A. hall to permit the use of the hall for a union meeting occurred on January 26, 1945. (R. 7). In June of the preceding year the Circuit Court of Appeals of the Fifth Circuit had said in the *LeTourneau* case, 143 F. 2d 67: "Under the National Labor Relations Act it is well settled that the employer cannot 'interfere' with any effort of the employees to organize, either to encourage or prevent it. He cannot facilitate the organization even by providing a meeting place without incurring the charge that he is attempting to dominate it . . . It may be wisest and best for all concerned that the employees discuss and act on the matter of their own organization elsewhere than on the employer's property."

It was not until April 23, 1945, three months after the refusal complained of in the instant case took place, that this Court reversed the lower Court in the *LeTourneau* case. So far as the law stood at the time of the refusal the owners of the hall would have been guilty of a violation of the Act if they had permitted the hall to be used for the meeting.

Besides, while this Court overruled the Circuit Court in that case and held that prohibiting the distribution of union circulars on the parking lot provided for the employees was a violation of the Act, the case is not authority for the position that an employer must provide and maintain a hall for union meetings.

VIOLATION OF PROPERTY RIGHTS

If the Circuit Court of Appeals had sustained the Board it would have been a violation of the Respondents' property rights. No individual can requisition the use of private property for any purpose. The Government itself cannot take it except for a public use, and then only by paying for it and observing due process of law. This applies to Congress, to the executive and to the courts. Fifth Amendment to the Constitution of the United States.

DECISION NOT IN CONFLICT WITH DECIDED CASES

The decision of the lower court is not in conflict with any case heretofore decided by this court.

There is a vast distinction between this case and the *Le Tourneau* Case, 324 U. S. 793. In that case the employer promulgated a rule prohibiting distribution of literature on the plant premises without permission from its personnel department. The company maintained a parking lot for the use of its employees. The plant manager denied a request of the president of the local union to permit the distribution of handbills in and about the plant announcing a union meeting, and the next day the president of the union went ahead and distributed union handbills on the parking lot during the lunch hour.

There the lot was set aside for the use of the employees as such. They were rightfully on the property and the Board found that the application of the rule to the distribution of union literature by the employees on the lot which resulted in the layoffs was an unfair labor practice under Sections 8 (1) and 8 (3) of the Act.

In the instant case the employees as such had no right to go into the hall without permission. The hall was not on mill premises. It was in the business district of the village. It was not connected with the mills or used for mill purposes. On this occasion neither the employees nor the representatives of the union had the permission of the Order or of the owners to use the hall. The permission tentatively granted by the president of Order (who said such permission had to be granted by a vote of the members) was withdrawn when the owners objected. The owners, through their agent, D. P. Stowe, refused permission. (R. 50).

The decision of the Circuit Court of Appeals is in no sense in conflict with the recent case of *N. L. R. B. v. Lake Superior Lumber Corp.*, cited on page 32 of the Board's Cross-petition

and Brief. There the bunkhouses were provided by the employer, on its premises, for the use of its employees as such. In the instant case the hall is off the mill premises, in the business district of the town, is not appurtenant to the business of any of the Respondents, and was built for use by a patriotic order in no way connected with the mills and in which membership was not restricted to employees, with the understanding that it was not to be used by any other organization. The *Lake Superior Lumber Corp.* case is in line with *N. L. R. B.* v. *West Kentucky Coal Co.*, 116 Fed. 2d 816, in which the court enforced an order of the Board requiring the employer to cease and desist from denying to its employees residing in houses owned by the employer the right to have any person call at their homes for the purpose of consulting, conferring or advising with, talking to, meeting or assisting, the employer's employees or any of them, in regard to the rights of the employees under the Act to self-organization.

The Circuit Court in the *Lake Superior Lumber Company* case drew a distinction between that case and the instant case, saying: "In our opinion, it (the Stowe case) involved an entirely different question and is not applicable. Free use of a company's private property for purposes of union organization, rather than access to employees in the property, was the issue. The employees neither lived in the property involved, nor, as a matter of right, spent any of their time there."

Marsh v. *Alabama*, 326 U. S. 501, 508, deals with the distribution of religious literature on the public streets of a company-owned town.

In the case of *Republic Aviation Corp.* v. *N. L. R. B.*, 324 U. S. 793, an employee was discharged for infraction of a company rule against soliciting in the factory. He had passed out application cards on his own time during lunch periods. In the *LeTourneau* case two employees were discharged for distributing union literature on a parking lot furnished by the

employer for use by its employees. In each case the employees were rightfully on the property; whereas, in the instant case, the P. O. S. of A. hall was not set apart for the use of the employees as such, but for the use of the Patriotic Order Sons of America, a patriotic secret order to which any male citizen of the United States of good moral character was eligible for membership.

In the case of *N. L. R. B.* v. *Cities Service Oil Co.*, 122 F. 2d 194, the Court sustained an order of the Board requiring the respondent to cease and desist from refusing passes to union Representatives to go on board tankers in order to investigate and negotiate concerning grievances of the seamen, but required that the order be amended by the addition of the following clause: "But such passes are not required to be issued without a provision therein that they shall be forfeited if the holder used his access to the vessels either to solicit membership in the Union or to collect dues."

RIGHTS OF ASSEMBLY AND FREE SPEECH

The Board in its conclusions as to the refusal says: "We have held, and the Supreme Court of the United States has confirmed the view, that when an employer's right to regulate the use of his own property comes into conflict with the employees' right to receive information to enable them to exercise their right to self-organization, which it is the policy of the Act to encourage, the conflicting rights must be balanced to determine which right, in a given situation, is paramount." (R. 9).

We do not find where the Supreme Court of the United States (or any other court) has held that it is the duty of an employer to furnish a hall for the employees to receive this information in. The *LeTourneau* case does not so hold.

Petitioner takes the position that the constitutional rights of assembly and free speech overbalance constitutional rights of private property. The cases cited do not warrant such a contention in the instant case. The right of free assembly does not

give the right to assemble on somebody else's private property against his will. Nor does the right of free speech give the right to speak anywhere at any time and to say anything the speaker wishes to say.

STOWE SPINNING COMPANY OWNED ONLY A ONE-FOURTH INTEREST IN THE HALL

The proposed meeting was for the employees of Stowe Spinning Company only. (R. 67). Stowe owns only a one-fourth interest in the property. The Board's Order would compel the other mills to furnish property for Stowe's employees to meet in.

The cease and desist order issued against all the Respondents, if carried out, would require the Acme, Perfection and Linford Companies, who own each a one-fourth undivided interest in the hall, to permit the use of their property by the employees of Stowe Manufacturing Company to whom they owe no duty under the Act.

THE BOARD'S ORDER WITH RESPECT TO THE USE OF THE HALL WAS IMPROPER

If the Court should find that the refusal of the Respondents to prevent the use of the hall under the attendant circumstances was discriminatory and in violation of Section 8 (1) of the Act, it does not follow that the Board's order was proper.

The order (R. bottom p. 22) requires that the respondents, upon request, grant to all persons employed in respondents' mills and to Textile Workers Union of America, C. I. O., or any other labor organization, the use of the hall for purposes of self-organization or collective bargaining. There are no limitations as to time or circumstances. Literally interpreted (if the order is sustained) this means that the owners can never devote the space now occupied by the hall to other purposes, or lease it or sell it, without being guilty of contempt of court. The owners would be required to keep the hall open perpetually.

under any and all circumstances, for the use of the employees in their union activities and for the use of any labor union (whether party to this action or not) that might come along and wish to use it. That would be an unwarranted control of private property by the government, in violation of the respondents' constitutional rights. It would also establish the clear-cut principle that it is the duty of an employer at all times to maintain a hall for its employees to meet in for union activities. This is beyond the requirements of the Act.

The Board held that the refusal of the owner of the hall to permit the union to use it for organizational purposes was due to the owners' hostility to the union and therefore in violation of the Act. However, under the Board's order the Respondents henceforth have no right for any reason, good or bad, to refuse the use of the hall. Hostility to a labor union may be a mistaken attitude, but it is not a crime or such a deviation from the line of rectitude as to require or justify the indefinite deprivation of a person's constitutional rights on account of it.

The statement on page 10 of the Board's cross-petition: "The Board found in view of the employers' practice of permitting the hall to be used by all other groups and organizations, their refusal to allow its use for organizational purposes 'constituted unlawful disparity of treatment and discrimination against the union,'" is not a correct statement. The Board did not find that it was the employers' practice to permit all other groups and organizations to use the hall.

The same inaccurate statement is contained in the Board's specification of errors (Cross-petition, p. 24), when it describes the hall as being a "meeting hall which is available for use by all persons and organizations not engaged in labor activities."

But if the Board's finding and the lower court's holding had been as stated and the hall had been available for all persons and organizations not engaged in labor activities, this would not have amounted to a dedication of the hall to all public and private uses.

NO IMPORTANT QUESTION OF FEDERAL LAW WHICH HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT

The only question of federal law the Petitioner is requesting the court to decide in this case is whether or not the guaranty contained in the Fifth Amendment to the Constitution of the United States against the deprivation of a person's property without due process of law means what it says. It is conceded that that is an important question. We deem it unnecessary to cite authorities to show that it has not been settled by this Court.

CONCLUSION

We respectfully submit that the Board's petition for a writ of certiorari in No. 757 should be denied for that it does not present an important question of federal law which has not been, but should be, settled by this court, or a federal question which has been decided in a way probably in conflict with applicable decisions of this Court.

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